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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,601	07/01/2003	Charles Frederick Schroer JR.	9128-023-999	4815
32172	7590	04/08/2005		
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP 1177 AVENUE OF THE AMERICAS (6TH AVENUE) 41 ST FL. NEW YORK, NY 10036-2714			EXAMINER REICHLER, KARIN M	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/612,601	SCHROER ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-48 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 July 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10-24-03</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Specification

Drawings

1. The drawings are objected to because Figure 3 and the description thereof in paragraph 22 are inconsistent, i.e. Figure 3 is also partly in section or cut away. It is also noted that the Figure 3 would be in better form if the length and width of the article were denoted numerically rather than textually. The cross-section should be denoted Y-Y rather than y-y. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

2. The abstract of the disclosure is objected to because terminology which can be inferred and legal terminology, i.e. “The present invention relates to” and “comprising”, should be avoided. Correction is required. See MPEP § 608.01(b).
3. The disclosure is objected to because of the following informalities: Again the description of Figure 3 in paragraph 22 and Figure 3 are inconsistent.

Appropriate correction is required.

Claim Language Interpretation

4. Other than the terminology explicitly defined in paragraphs 25-29, the claim terminology will be given its ordinary, i.e. dictionary, definition.

Claim Objections

5. Claims 11, 26 and 40 are objected to because of the following informalities: in claims 11 and 26, line 2, “,”(both) should be deleted. In claim 40, on line 1 “has” should be deleted and on line 2 ”which” should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. Claims 2-31 and 33-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 2-16, 18-31 and 33-48, a positive structural antecedent basis for “The disposable absorbent article”(line 1) should be set forth. In claims 5, 20 and 38, a positive structural antecedent basis for “the bonding points” should be set forth. In claim 17, a positive structural antecedent basis for “the leg openings” should be defined.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10, 12-25 and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Saisaka et al '424.

Claims 1, 3 and 12-15: See Figures, especially Figures 1-5, col. 3, lines 40-47, col. 4, lines 23 et seq, note especially line 65, col. 5, lines 3-9, 19-22, 25-28, 59-66, col. 6, lines 1-19, note especially col. 6, lines 1-2, 6-7 and 10-12 as well as the definition of “pervious” in paragraph 26 of the instant specification, i.e. the flaps can have only nonwoven material portions, i.e. flaps are “pervious”, col. 6, lines 27-45, col. 7, lines 4 et seq, col. 9, line 39-col. 10, line 65, i.e. the article is 1, the liquid pervious hydrophobic backsheet is 21, the liquid pervious top sheet is 14, the liquid pervious hydrophobic barrier cuffs are 17, the core is 15 and can be of rectangular shape, the liquid impervious barrier layer is 13, the leg elastic members are 27 and the barrier layer, topsheet and core are not present in the portions of the article where the leg elastics are located, i.e. located laterally inboard of such, narrower than the elastic separation distance, and the barrier layer does not wrap around the core.

Claims 2, 4, 6-10, 14, and 16: see Figures, i.e. the ends of the barrier layer are coextensive with those of the article but the ends of the core are not, and discussion of claims 1, 3, and 12-15.

Claim 5: see Figure 5, the bonding point is adjacent 16.

Claims 17-25 and 27-31: see discussion of claims 1-10 and 12-16 supra. Also, with regard to the topsheet, see definition of “hydrophilic” in the instant specification and col. 5, lines 18-21 of Saisaka, i.e. the topsheet is liquid permeable, i.e. accepts fluid, i.e. is “hydrophilic”.

Claim Rejections - 35 USC § 102/103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11, 26 and 32-48 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Saisaka et al ‘424.

Claim 11: See portions of Saisaka cited supra, i.e. breathable, i.e. moisture permeable, crotch region and Figure 5, i.e. the portion of the crotch region where the leg elastics are but the barrier layer is not located does not include as many layers, including the core, as other portions of the article. Applicant claims such crotch region portion has the property of reduced stiffness. It is noted that the claim does not recite what the portion is “reduced” with respect to, i.e. the remainder of the article? A portion of the remainder? Saisaka et al, while not specifically teaching the breathable leg elastic containing portion has “reduced” stiffness, teaches that such

portion does not include as many layers, including the core, as other portions of the article. Therefore, at the very least, there is sufficient factual basis for one to conclude that the properties of such crotch portion would also inherently include the property of “reduced” stiffness compared to other portions of the article including more and/or thicker layers such as the core. See MPEP 2112.01. At the very most, it would be obvious to one of ordinary skill in the art that such crotch region would necessarily and inevitably include such property of “reduced” stiffness compared to other portions of the article including more and/or thicker layers such as the core.

Claims 26, 32 and 36-48: see discussion of claims 1-25 and 27-31 supra.

Claims 33-35: The breathable zones of inherent or obvious “reduced” stiffness comprise portions of the absorbent article, e.g. element 21, which do not “encompass”, i.e. defined as “to include or comprise”, any liquid impervious or hydrophilic material, i.e. element 21 can be a water or liquid permeable, hydrophobic material.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other cited but not applied references also teach crotch regions having elastic elements but no barrier layer.
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.M. Reichle
Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
April 4, 2005